IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 251 OF 2006

Sudhir Vinayak Kunjir. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Mr.S.V. Kotwal with Mr.M.S. Mohite for Applicant.
Ms.Rajeshree M. Gadhavi, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 6, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant was arrested in connection with an offence punishable under Section 302 in respect of a complaint which is registered at the Kothrud Police Station. It is alleged by the prosecution that the deceased was a tailor and he was standing near the shop when the applicant and others came there. They demanded Rs.251/- as contribution towards the Ganesh Festival. The deceased expressed his inability to pay Rs.251/- and informed the applicant and others that he would pay Rs.21/- as he had done in the last year. Being enraged,

the applicant assaulted the deceased with rubber tube which was lying in a nearby shop. The other accused assaulted the deceased with an iron chair which was lying thereby on his head and the other two accused assaulted him with kick blows and fist blows. The applicant came home and reported this incident to the wife. Thereafter, late in the night, he had a pain in his head and felt giddiness. Therefore, he was admitted to the hospital, he, however, died after three days.

2. It is submitted by the learned Counsel for the applicant that the other two applicants have been released on bail and the only role attributed to the present applicant is that he assaulted the deceased with rubber tube which could not be cause of death of the deceased.

3. Learned APP vehemently opposed the application for grant of bail. She submitted that the statement of the eye witnesses clearly indicate that the applicant had assaulted the deceased alongwith others on the refusal by the deceased to pay Rs.251/- towards the

contribution for the Ganesh Festival. She submitted that the bail was granted to the two other accused because they had assaulted the deceased with kick blows and fist blows. On the other hand, she submitted that the applicant and other accused had assaulted the deceased with the rubber tube and iron chair. She submitted that therefore, the applicant was not entitled to be released on bail on the ground of parity.

4. I have heard learned Counsel for the applicant and learned APP for the State. From the facts as reveals from the statements of eye witnesses and other witnesses, it appears that the applicant and others had assaulted the deceased for non-payment of contribution for the Ganesh Festival and on this trivial ground, a person had lost his life. The offence which is committed thus indicate the attitude of the applicant and others is demanding and extorting amount from the common public. The deceased was a tailor and had a tailoring shop on the street. However, though the offence which is committed by the applicant and others is of a very serious nature, yet the fact remains that

while considering the question of grant of bail, this Court cannot appreciate the evidence which is recorded by the Investigating Officer in the form of statements of the witnesses. The Court has to ascertain whether the applicant is likely to tamper with the evidence or is likely to abscond. Bail cannot be refused as and by way of punishment in view of the commission of a serious offence. From the post mortem notes, it is seen that the cause of death was head injury. Therefore, under these circumstances, it cannot be said that the applicant shared the common intention or object with the other accused Borate who assaulted the deceased, as the incident had taken place all of a sudden without any premeditation. However, as rightly pointed out by the learned APP, there is always a possibility that the applicant may tamper with the evidence or threaten the wife. This can be taken care of by imposing stringent conditions.

5. Under the circumstances, the applicant be released on bail in the sum of Rs.5000/- with one or two sureties in the like amount. The applicant shall not

enter the jurisdiction Pune City till the disposal of the case. The applicant shall give new address of his residence before he is released on bail to the superintendent of Jail. The applicant shall report to the nearest police station of his new address once in a week. The application is disposed of.

6. It is made clear that if any attempt is made by the applicant to tamper with the evidence, then there would be a good ground for PP to apply for cancellation of bail.

(V.M. KANADE, J.)